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State v. Ribaudo Respondent's Brief Dckt. 42150

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO, Plaintiff-Respondent, v. JUSTIN A. RIBAUDO, Defendant-Appellant.	NO. 42150 Jefferson County Case No. CR-2013-2125 RESPONDENT'S BRIEF

Issue

Has Ribaudo failed to establish that the district court abused its discretion by declining to place him on probation and imposing concurrent unified sentences of four years with two years fixed and three years with one and one-half years fixed upon his guilty plea to two counts of aggravated battery?

Ribaudo Has Failed To Establish That The District Court Abused Its Sentencing Discretion

Rigby Police were dispatched to the scene of a vehicle and pedestrian accident at the parking lot of a local store. (R, p. 8.[1]) Ribaudo fled the area, but was subsequently located and detained by another officer. (Id.) Upon arriving at the accident scene, witnesses advised police that Ribaudo had deliberately tried to run over the victim, Wesley Pelton. (R., pp. 8-9.) Mr. Pelton told Officer Sickinger that he had been "standing in the parking lot talking to a friend when [Ribaudo] came pulling into the parking lot" nearly hitting him, his friend and her child. (R., p. 9.) Mr. Pelton stated that after Ribaudo missed hitting him the first time, he "then backed up and again charged at him in his vehicle trying to hit him again." (Id.)

The State charged Ribaudo with one count of aggravated battery and two counts of aggravated assault. (R., pp. 45-47.) The State then amended the charges to aggravated battery, leaving the scene of an accident, and unlawful transportation of an open container of alcoholic beverage. (R., pp. 89-91.) Pursuant to a plea agreement, the State agreed to dismiss these charges in exchange for Ribaudo's guilty plea to two counts of aggravated assault. (R., pp. 153-54, 160-61.) The State then filed a Second Amended Information charging Ribaudo with two counts of aggravated assault, to which he pleaded guilty. (R., p. 155-56.) The district court accepted Ribaudo's guilty plea and imposed a unified sentence of four years with two years fixed, a concurrent unified sentence of three years with one and one-half years fixed, and retained jurisdiction for

[1] Citations to the Record are to the electronic file "ribaudo CLERK'S RECORD (2).pdf."

365 days. (R., pp. 175-83.) Ribaudo timely appealed from the district court's amended judgment of conviction. (R., pp. 184-87.)

On appeal, Ribaudo argues his sentence is excessive in light of several mitigating factors including, "a lack of criminal history, the age of the Appellant, and the recommendations of the Pre-Sentence Investigation." (Appellant's Brief, p. 6.) The record supports the sentence imposed by the district court.

The length of a sentence is reviewed under an abuse of discretion standard considering the defendant's entire sentence. State v. Oliver, 144 Idaho 722, 726, 170 P.3d 387, 391 (2007) (citing State v. Strand, 137 Idaho 457, 460, 50 P.3d 472, 475 (2002); State v. Huffman, 144 Idaho 201, 159 P.3d 838 (2007)). It is presumed that the fixed portion of the sentence will be the defendant's probable term of confinement. Oliver, 144 Idaho at 726, 170 P.3d at 391 (citing State v. Trevino, 132 Idaho 888, 980 P.2d 552 (1999)). Where a sentence is within statutory limits, the appellant bears the burden of demonstrating that it is a clear abuse of discretion. State v. Baker, 136 Idaho 576, 577, 38 P.3d 614, 615 (2001) (citing State v. Lundquist, 134 Idaho 831, 11 P.3d 27 (2000)).

To demonstrate a clear abuse of discretion, the appellant must show that the sentence is excessive under any reasonable view of the facts. Baker, 136 Idaho at 577, 38 P.3d at 615. A sentence is reasonable, however, if it appears necessary to achieve the primary objective of protecting society or any of the related sentencing goals of deterrence, rehabilitation or retribution. Id. The protection of society is, and must always be, the ultimate goal of any sentence. State v. Moore, 78 Idaho 359, 363, 304 P.2d 1101, 1103 (1956). Accordingly, appellate courts must take into account "the

nature of the offense, the character of the offender, and the protection of the public interest." State v. Hopper, 119 Idaho 606, 608, 809 P.2d 467, 469 (1991); see also I.C. §19-2521.

The district court's decision not to place Ribaudo on probation immediately is appropriate in light of his crime, his lack of remorse for his victim, and his failure to comply with the terms of his pretrial release. Witnesses to the incident and a store security video clearly showed Ribaudo enter the parking lot at a high rate of speed, endangering everyone in the area, and deliberately attempt to run down Mr. Pelton with his truck. (PSI, pp. 23-25.[2]) The responding officer observed "several skid marks in the parking lot which was consistent with the witness's description of events," and noted there was one set of skid marks circling the car where Mr. Pelton had been standing talking with his friend and her child. (PSI, p. 27.) When interviewed by police, Ribaudo claimed the whole incident was an accident and stated that Mr. Pelton had fallen after he had tried to jump on the hood of the truck. (Id.) The presentence investigator noted Ribaudo "did not admit responsibility for the instant offense even [sic] despite the evidence provided in the video footage provided by Broulim's. Justin expressed some remorse for his actions but very little remorse for his victims, one of which was a child." (PSI, p. 13.) Likewise, the substance abuse evaluator reported, Ribaudo "states he does feel bad that he scared the young lady ... [but I] heard no remorse for the young man." (PSI, p. 40.)

Nor has Ribaudo shown he can comply with the terms of supervision. In 2012, Ribaudo was convicted of petit theft (amended from felony burglary) and placed on

[2] Citations to the PSI are to the electronic file "ribaudo psi CONFIDENTIAL (2).pdf."

unsupervised probation for two years. (PSI, p. 5.) While on probation in that case Ribaudo was convicted of inattentive driving (amended from reckless driving) and the felonies in this case. (PSI, pp. 5-6.) While on pretrial release awaiting sentencing in this case, Ribaudo tested positive for alcohol. (R., pp. 158-59.) Ribaudo "adamantly denied any use of alcohol" but was proved to be lying by testing. (R., pp. 158-59, 171.) In declining to place Ribaudo on probation, the district court stated:

> I've taken into consideration the family situation that you've grown up in [and] the fact that you've already served almost seven months in jail. I've also looked at the video. And as I see that, frankly, I can see how you could have been charged with more serious crimes. I've taken into consideration the seriousness of the offenses that you've pled guilty to. And I believe you have a serious drug and alcohol problem. And your thinking is -- when you think about life and people and society, it's troubling.

(Tr., p. 31, Ls. 3-12.) The district court's sentence is appropriate as imposed.

On appeal, Ribaudo argues his sentence is excessive in light of his lack of criminal history "and the favorable recommendation [of the presentence investigator]." (Appellant's Brief, p. 6.) Ribaudo specifically argues that the district court failed to consider these factors when in imposed his sentence. (Id.) The record, however, shows the district court specifically considered Ribaudo's general lack of criminal history as well as the goals of sentencing when it declined to place Ribaudo on probation immediately and chose, instead, to retain jurisdiction. (Tr., p. 30, L. 9 – p. 31, L. 13.) A period of retained jurisdiction was also the recommendation of the presentence investigator who stated that "it is my opinion that Justin presents a significant risk to the community and that he is not amenable to supervised probation. I recommend a Retained Jurisdiction with the Idaho Department of Correction which will allow Justin to

pursue treatment and obtain his GED in a secure setting." (PSI, p. 14.) Ribaudo has failed to show an abuse of discretion.

Ribaudo was not an appropriate candidate for community supervision. He deliberately struck the victim with his truck multiple times. (PSI, p. 3.) Ribaudo lied to the police about the incident, and showed no remorse for his actions to either the presentence investigator, or the substance abuse evaluator. (PSI, pp. 13, 26, 40.) The district court found Ribaudo's thinking "troubling" and correctly determined that society could best be protected with a period of retained jurisdiction where Ribaudo could begin his rehabilitation in a secure facility. (Tr., p. 31, Ls. 3-22.) Ribaudo has failed to show an abuse of sentencing discretion.

Conclusion

The state respectfully requests this Court to affirm the judgment of the district court.

DATED this 22nd day of September, 2014.

for KENNETH K. JORGENSEN
Deputy Attorney General

CATHERINE MINYARD
Paralegal

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this 22nd day of September, 2014, caused a true and correct copy of the attached RESPONDENT'S BRIEF to be placed in the United States mail, postage prepaid, addressed to::

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